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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/778,860	02/08/2001	Mitsuru Iwasaki	040679-1209	6172

7590

01/13/2003

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EXAMINER

ATKINSON, CHRISTOPHER MARK

ART UNIT

PAPER NUMBER

3743

DATE MAILED: 01/13/2003

Please find below and/or attached an Office communication concerning this application or proceeding.



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EXAMINER

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DATE MAILED:

This is a communication from the examiner in charge of your application.
COMMISSIONER OF PATENTS AND TRADEMARKS

OFFICE ACTION SUMMARY

☒ Responsive to communication(s) filed on 10/17/02

☒ This action is FINAL.

☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 D.C. 11; 453 O.G. 213.

A shortened statutory period for response to this action is set to expire 3 month(s), or thirty days, whichever is longer, from the mailing date of this communication. Failure to respond within the period for response will cause the application to become abandoned. (35 U.S.C. § 133). Extensions of time may be obtained under the provisions of 37 CFR 1.136(a).

Disposition of Claims

☒ Claim(s) 1-25 is/are pending in the application.

Of the above, claim(s) 3, 12 + 14-24 is/are withdrawn from consideration.

☐ Claim(s) _____ is/are allowed.

☒ Claim(s) 1, 2, 4-11, 13 + 25 is/are rejected.

☐ Claim(s) _____ is/are objected to.

☐ Claims _____ are subject to restriction or election requirement.

Application Papers

☐ See the attached Notice of Draftsperson's Patent Drawing Review, PTO-948.

☐ The drawing(s) filed on _____ is/are objected to by the Examiner.

☐ The proposed drawing correction, filed on _____ is ☐ approved ☐ disapproved.

☒ The specification is objected to by the Examiner.

☐ The oath or declaration is objected to by the Examiner.

Priority under 35 U.S.C. § 119

☐ Acknowledgement is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d).

☐ All ☐ Some* ☐ None of the CERTIFIED copies of the priority documents have been

☐ received.

☐ received in Application No. (Series Code/Serial Number) _____

☐ received in this national stage application from the International Bureau (PCT Rule 17.2(a)).

*Certified copies not received: _____

☐ Acknowledgement is made of a claim for domestic priority under 35 U.S.C. § 119(e).

Attachment(s)

☐ Notice of Reference Cited, PTO-892

☐ Information Disclosure Statement(s), PTO-1449, Paper No(s). _____

☐ Interview Summary, PTO-413

☐ Notice of Draftsperson's Patent Drawing Review, PTO-948

☐ Notice of Informal Patent Application, PTO-152

- SEE OFFICE ACTION ON THE FOLLOWING PAGES -

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Response to Amendment

Applicant's arguments filed 10/17/2002 have been fully considered but they are not persuasive.

Claims 3, 12 and 14-24 remain withdrawn from further consideration pursuant to 37 CFR 1.142(b) as being drawn to a nonelected species, there being no allowable generic or linking claim. Election was made without traverse in Paper No. 7. The elected species does not disclose the limitations of claim 14 and 19.

Specification

The following is a quotation of the first paragraph of 35 U.S.C. 112:

The specification shall contain a written description of the invention, and of the manner and process of making and using it, in such full, clear, concise, and exact terms as to enable any person skilled in the art to which it pertains, or with which it is most nearly connected, to make and use the same and shall set forth the best mode contemplated by the inventor of carrying out his invention.

The following is a quotation of 37 CFR 1.71(a)-(c):

(a) The specification must include a written description of the invention or discovery and of the manner and process of making and using the same, and is required to be in such full, clear, concise, and exact terms as to enable any person skilled in the art or science to which the invention or discovery appertains, or with which it is most nearly connected, to make and use the same.

(b) The specification must set forth the precise invention for which a patent is solicited, in such manner as to distinguish it from other inventions and from what is old. It must describe completely a specific embodiment of the process, machine, manufacture,

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composition of matter or improvement invented, and must explain the mode of operation or principle whenever applicable. The best mode contemplated by the inventor of carrying out his invention must be set forth.

© In the case of an improvement, the specification must particularly point out the part or parts of the process, machine, manufacture, or composition of matter to which the improvement relates, and the description should be confined to the specific improvement and to such parts as necessarily cooperate with it or as may be necessary to a complete understanding or description of it.

The specification is objected to under 37 CFR 1.71 because the specification fails to teach the elected species, which has cut outs (23), being "free from cut-out portions."

Claim Rejections - 35 USC § 112

The following is a quotation of the first paragraph of 35 U.S.C. 112:

The specification shall contain a written description of the invention, and of the manner and process of making and using it, in such full, clear, concise, and exact terms as to enable any person skilled in the art to which it pertains, or with which it is most nearly connected, to make and use the same and shall set forth the best mode contemplated by the inventor of carrying out his invention.

Claim 25 is rejected under 35 U.S.C. 112, first paragraph, as containing subject matter which was not described in the specification in such a way as to reasonably convey to one skilled in the relevant art that the inventor(s), at the time the application was filed, had possession of the claimed invention. In claim 25, the specification fails to teach the elected species, which has cut outs (23), being "free from cut-out portions."

Claim Rejections - 35 USC § 103

The following is a quotation of 35 U.S.C. § 103 which forms the basis for all obviousness rejections set forth in this Office action:

A patent may not be obtained though the invention is not identically disclosed or described

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as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Subject matter developed by another person, which qualifies as prior art only under subsection (f) or (g) of section 102 of this title, shall not preclude patentability under this section where the subject matter and the claimed invention were, at the time the invention was made, owned by the same person or subject to an obligation of assignment to the same person.

Claims 1-2, 4-11, 13 and 25 are rejected under 35 U.S.C. § 103 as being unpatentable over Sugimoto et al. ('518) in view of Nishishita et al. ('368). The patent of Sugimoto et al. ('518) discloses all the claimed features of the invention with the exception of the flat part having a third louver

The patent of Nishishita et al. ('368) discloses that it is known to have a louver(s) (51,52) in the flat part of the fin for the purpose of increasing the fins' flat part strength and obstructing heat transfer. It would have been obvious at the time the invention was made to a person having ordinary skill in the art to employ in Sugimoto et al. ('518) a louver(s) in the flat part of the fin for the purpose of increasing the fins' flat part strength and obstructing heat transfer as disclosed in Nishishita et al. ('368). It would have been an obvious matter of design choice to have the claimed spacing distance and tube widths since such modifications would have involved a mere change in the relationship of the parts which does not solve any stated problem or produce any new and/or unexpected result.

Since claim 25 is indefinite and not disclosed by the originally filed specification, the

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Examiner is unclear of the meats and bounds of claim 25 and the above and below rejections are given as best understood.

Claim 25 is rejected under 35 U.S.C. § 103 as being unpatentable over Sugimoto et al. ('518) in view of Nishishita et al. ('368) as applied to claims 1-2, 4-11 and 13 above, and further in view of the Prior Art device illustrated in Figure 19 in the instant application. The patent of Sugimoto et al. ('518) as modified, discloses all the claimed features of the invention with the exception of the flat part free from cut-out portions.

The Prior Art device illustrated in Figure 19 in the instant application discloses that it is known to have a flat part free from cut-out portions for the purpose of obstructing heat transfer. It would have been obvious at the time the invention was made to a person having ordinary skill in the art to employ in Sugimoto et al. ('518) as modified, a flat part free from cut-out portions for the purpose of obstructing heat transfer as disclosed in the Prior Art device illustrated in Figure 19 in the instant application.

Response to Arguments

The functional recitation that "constructed to obstruct a heat transfer in the fin" has not been given patentable weight because it is narrative in form. In order to be given patentable weight, a functional recitation must be expressed as a "means" for performing the specified function, as set forth in 35 USC § 112, 6th paragraph, and must be supported by recitation in the claim of sufficient structure to warrant the presence of the functional language. *In re Fuller*, 1929 C.D. 172; 388 O.G. 279. Furthermore, see column 4, lines 43-45 and 50-53, where 51 is part of

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50 which is a heat transfer prevention portion. Therefore, the portions 51 and 50 are heat transfer prevention portions. Items 51,52 are bent portions and are therefore louvers. Applicant does not define in the claims that his louvers are of any specific shape. Items 300 in Fig. 4A in Sugimoto et al. ('518) ^{are} serve as radiators.

Conclusion

Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire **THREE MONTHS** from the mailing date of this action. In the event a first reply is filed within **TWO MONTHS** of the mailing date of this final action and the advisory action is not mailed until after the end of the **THREE-MONTH** shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than **SIX MONTHS** from the date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Christopher Atkinson whose telephone number is (703) 308-2603.


C.A.

January 13, 2003

CHRISTOPHER ATKINSON
PRIMARY EXAMINER